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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,307	06/16/2005	Henry Kamphuis	03100226AA	2682
30743 7590 10/08/2008 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190				
EXAMINER PLUMMER, ELIZABETH A				
ART UNIT 3635		PAPER NUMBER		
MAIL DATE 10/08/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/539,307

**Applicant(s)**

KAMPHUIS, HENRY

**Examiner**

ELIZABETH A. PLUMMER

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 06/16/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Preliminary amendments received 06/16/2005 have been entered. Claims 1-11 are pending. This is a first Office action on the merits for application serial number 10/539,307 filed 06/16/2005.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Regarding claims 1, 4, 8 and 9, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.
4. Regarding claim 5, the phrase "and/or" is inherently indefinite.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Remmele et al. (US Patent 5,797,131).

- a. Regarding claim 1, Remmele et al. discloses a system for coating dimensionally stable construction materials for protection from environmental influences (column 1, lines 5-9) comprising a base material (base coat 20) which is applied to the construction material and has rubber elastic behavior (column 2, lines 17-26) and in which a reinforcing mat (22) is embedded (column 3, lines 65-68), and an outer later (26) which is applied to the base material and comprises a polymer (column 2, lines 46-49).
- b. Regarding claim 2, the base material contains a rubber (column 2, liens 17-26).
- c. Regarding claim 3, the base material is brushable and self-adhesive (column 3, lines 56-61).
- d. Regarding claim 7, the reinforcing mat can be a woven fabric (column 2, lines 31-42).
- e. Regarding claim 8, the reinforcing mat can consist of fiber materials (column 2, lines 31-42).
- f. Regarding clam 9, Remmele et al. discloses a method for coating a dimensionally stable construction material with a coast as protection from environmental influences (column 1, lines 5-9), comprising a rubber elastic base material (20) is applied to the construction material by brushing it on (column 3, lines 55-61), and a reinforcing mat is embedded in the base material (column 3, lines 63-65), and an outer layer comprising a polymer is then applied to the base material (column 4, lines 1-4).

- g. Regarding claim 10, the base material is smoothed before application of the outer layer (column 3, lines 55-65).
  - h. Regarding claim 11, the outer layer is applied by spreading (with a sprayer or trowel) (column 4, lines 1-4).
7. Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuhrer (EP 0 286 370).
- a. Fuhrer discloses a system for coating dimensionally stable construction materials for protection from environmental influences comprising a base material (18) which is applied to the construction material (14) and has rubber elastic behavior (page 6, lines 1-9) and in which a reinforcing mat (16) is embedded (page 3, lines 41-44), and an outer later (20) which is applied to the base material and comprises a polymer (page 3, lines 45-46; page 6, lines 10-21).
  - b. Regarding claim 5, the outer layer contains calcite as a filler (page 6, lines 20-21).
  - c. Regarding claim 6, the outer layer can include paints, which inherently have colored pigments (page 6, lines 10-11).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuhrer (EP 0 286 370) in view of Cleef (US Patent 2,229,317). Regarding claim 4, Fuhrer discloses a base material, and the base material can comprise synthetic parts to improve binding and material properties. Fuhrer does not disclose that the parts are milled rubber parts. However, it is well known in the art that base materials can comprise milled rubber parts. For example, Cleef teaches a base material of cementitious coating comprising milled rubber parts (column 2, lines 5-10) in order to make a coating that can be applied with a brush. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fuhrer to use milled rubber parts, such as taught by Cleef, in order to reinforce the base material without making it too thick.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH A. PLUMMER whose telephone number is (571)272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633

/E. A. P./

Examiner, Art Unit 3635